



SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, and 127

RIN 3245-AH93

Small Business Size Standards: Adjustment of Monetary-Based Size Standards, Disadvantage Thresholds, and 8(a) Eligibility Thresholds for Inflation

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule finalizes, without change, the U.S. Small Business Administration's (SBA or Agency) November 17, 2022, interim provisions that adjusted monetary-based industry size standards (i.e., receipts- and assets-based) for inflation. Specifically, this rule finalizes three interim final actions adopted in the November 17, 2022 rule. First, this rule finalizes an additional 13.65 percent inflation increase to the industry-based monetary small business size standards to account for the inflation that occurred since the last adjustment to size standards for inflation in 2019. Second, this rule finalizes inflation adjustments to three program-specific monetary size standards: the size standards for sales or leases of government property, the size standards for stockpile purchases, and the alternative size standard based on tangible net worth and net income for the Small Business Investment Company (SBIC) program. Third, this rule finalizes inflation adjustments to the economic disadvantage thresholds applicable to the 8(a) Business Development and Economically Disadvantaged Women-Owned Small Business programs, and the dollar limit for combined total 8(a) contracts.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: As explained in the SBA’s “Size Standards Methodology” white paper available at www.sba.gov/size and at www.regulations.gov (Docket ID: SBA-2018-0004), SBA reviews small business size standards and makes necessary adjustments to them for three reasons: (i) changes in industry structure and Federal market conditions under the Small Business Jobs Act of 2010 (Jobs Act), Public Law 111-240, section 1344, Sep. 27, 2010; (ii) inflation in accordance with 13 CFR 121.102(c); and (iii) adoption of the latest North American Industry Classification System (NAICS) revision by the Office of Management and Budget. Updating size standards based on inflation—in addition to updating size standards based on the latest industry and Federal contracting data under the five-year rolling review—not only satisfies the Jobs Act’s mandate that SBA review all size standards every five years, but also is consistent with Executive Order 13563 on improving regulation and regulatory review.

Although SBA is required to assess the impact of inflation on its monetary-based size standards *at least* once every five years (67 FR 3041; January 23, 2002) (13 CFR 121.102(c)), SBA may modify the timing of its adjustments to size standards and consider adjustments even more frequently than five-year intervals based on the prevailing economic conditions and the important policy objective of maintaining the value of size standards in inflation-adjusted terms.

Accordingly, on November 17, 2022 (87 FR 69118), SBA published a joint final rule and interim final rule (IFR) that finalized, without change, SBA’s July 2019 IFR (84 FR 34261; July 18, 2019) that adjusted industry-based (*i.e.*, receipts- and assets-based) and certain program-specific monetary size standards for inflation that occurred since the previous inflation adjustment in 2014 (79 FR 33647; June 12, 2014). SBA’s November 2022 rule also contained interim final provisions to increase by 13.65 percent all industry-specific monetary small business size standards, including receipts-based size standards for

496 industries and nine subindustries (*i.e.*, “exceptions” in the SBA Table of Size Standards), as well as assets-based size standards for four industries.

SBA assessed the impact of the general price increases on size standards before the normal five-year review for inflation was due, which would have been in 2024, due to the prevailing economic conditions and the rise in the general level of prices since the last adjustment in 2019. SBA’s adjustments to industry-based monetary size standards for inflation were in addition to the changes to monetary-based size standards adopted in March and June of 2022 as part of SBA’s second five-year rolling review of size standards,¹ as required by section 1344 of the Jobs Act.

SBA’s November 2022 rule also contained interim final provisions to adjust for inflation three program-specific receipts-based size standards. These include the size standards for sales or leases of government property which was increased from \$8 million to \$9 million in average annual receipts, the size standards for stockpile purchases which was increased from \$67.5 million to \$76.5 million in average annual receipts, and the alternative size standard based on tangible net worth and net income for the Small Business Investment Company (SBIC) program. Inflation adjustment increased tangible net worth from \$19.5 million to \$24 million and net income from \$6.5 million to \$8 million.

Besides adjustment of industry and program-based monetary size standards described above, the interim final provisions of the November 2022 rule also adjusted other monetary thresholds primarily used in the 8(a) Business Development (8(a) BD) program and the Economically Disadvantaged Women-Owned Small Business (EDWOSB) program

¹ See Small Business Size Standards: Agriculture, Forestry, Fishing and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Construction (87 FR 18607; March 31, 2022), Small Business Size Standards: Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing (87 FR 18627; March 31, 2022), Small Business Size Standards: Professional, Scientific and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services (87 FR 18665; March 31, 2022), Small Business Size Standards: Education Services; Health Care and Social Assistance; Arts, Entertainment and Recreation; Accommodation and Food Services; Other Services (87 FR 18646; March 31, 2022), and Small Business Size Standards: Wholesale Trade and Retail Trade (87FR 35869; June 14, 2022).

to determine eligibility of applicants and current participants as economically disadvantaged business concerns. Specifically, SBA adjusted for inflation the following Economic disadvantage thresholds for the 8(a) BD and EDWOSB programs: Net worth from \$750,000 to \$850,000 (13 CFR 124.104(c)(2)), Income (adjusted gross income or AGI) from \$350,000 to \$400,000 (13 CFR 124.104(c)(3)), and total assets from \$6 million to \$6.5 million (13 CFR 124.104(c)(4)). SBA also adjusted the dollar limit for combined total 8(a) contracts from \$100 million to \$168.5 million (13 CFR 124.519(a)).

In this final rule, SBA is adopting, without change, the interim final provisions contained in the November 2022 rule as described above. SBA's adoption of the interim final provisions provides assurances to the public that the Agency is monitoring inflation to determine whether to adjust size standards within a reasonable period since its last inflation adjustment. SBA's adoption of the interim final provisions also ensures that the recently reviewed industry-based monetary size standards under the Jobs Act are up-to-date for accurately determining small business status, and restores the eligibility of businesses that may have lost their small business status due solely to price level increases rather than from increases in business activity. Given the current developments in the U.S. economy, SBA will continue to monitor the inflation and other economic indicators and their impacts on size standards and adjust size standards, as needed.

The November 2022 rule requested comments from the public on SBA's methodology of using the gross domestic product (GDP) price index for adjusting size standards for inflation and suggestions for alternative measures of inflation, on whether SBA should adjust employee-based size standards for labor productivity growth and technical changes similar to adjusting monetary-based size standards for inflation, and on changes to program-specific size standards. Below is a discussion of those comments and SBA's responses.

As required under 13 CFR 121.102(e), SBA advises readers that interested eligible parties may file a petition for reconsideration of a revised, modified, or established size standard at SBA's Office of Hearings and Appeals (OHA) within 30 calendar days after publication of this final rule in accordance with 15 U.S.C. 632(a)(9) and 13 CFR part 134, subpart I. You may reach OHA using the following contact information: by mail at U.S. Small Business Administration, Office of Hearings and Appeals, 409 Third St., SW, Eighth Floor, Washington, DC 20416, by email at ohafilings@sba.gov, by phone: 202-401-8200 TTY/TRS: 711, or by fax at (202) 205-7059.

Summary and Discussion of Public Comments on the November 17, 2022 Rule

SBA received nine comments on the November 2022 rule, of which eight comments were relevant. Each of the eight relevant comments expressed general support for SBA's interim changes to NAICS-based industry size standards. Four commenters petitioned SBA to make adjustments to certain monetary thresholds other than monetary-based size standards that the Agency adjusted for inflation in the November 2022 rule, of which one commenter also petitioned SBA to consider changing its methodology for adjusting size standards for inflation generally. All comments are available at the Federal rulemaking portal, www.regulations.gov, and are summarized and discussed below.

Comments Supporting SBA's Changes

SBA received eight pertinent comments to the November 2022 rule that expressed general support for SBA's interim changes to industry-based monetary size standards. Commenters supported SBA's changes for several reasons, including the timeliness of SBA's adjustments given the recent increases in inflation and SBA's decision to issue the changes through an interim final rulemaking with requests for comments instead of a proposed rule. Commenters also expressed support for SBA's changes due to the expanded runway that it provides to small business in accessing SBA's financial assistance and contracting programs. One commenter explained that SBA's support of small business and

timely recognition of the impacts of inflation on the size standards and ability of small business to compete is laudatory. The commenter expressed that issuance of the inflation adjustments as an interim final rule while still soliciting public comment correctly balances the need for urgency and public interest. Another comment from a national organization representing over 15,000 minority-owned businesses expressed that minority-owned business enterprises (MBEs) will benefit greatly from this new rule change as it will help bring economic equity in the Federal contracting process. Another comment from a national trade association supported SBA's changes on the grounds that the changes will allow more small businesses to be eligible or remain eligible for SBA assistance.

SBA Response:

SBA agrees with commenters supporting the rule that there are various benefits from adopting the interim final changes to size standards contained in the November 2022 rule. The most significant benefits were described in the Regulatory Impact Analysis section of the November 2022 rule. The primary benefits include: (1) Some businesses that are above the current size standards may gain small business status under the higher, inflation-adjusted size standards, thereby enabling them to participate in Federal small business assistance programs; (2) Growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

SBA estimated that the changes adopted in the November 2022 rule enabled approximately 17,700 firms in industries and subindustries with receipts-based size standards and about 170 firms in industries with assets-based size standards, above SBA's size standards at the time, to gain small business status and become eligible for SBA

programs, resulting in about \$1.3 billion in additional small business Federal contract dollars to the newly-qualified businesses.

Moreover, SBA agrees with commenters regarding the importance of SBA's timely adjustments to size standards, including adjustments even more frequently than regular five year intervals, as required by 13 CFR 121.102(c)), based on the prevailing economic conditions. Accordingly, in response to the recent sustained increases in the general level of prices in the economy, SBA issued the November 2022 rule which contained interim final changes to adjust monetary size standards for inflation that has occurred since the last adjustment in July 2019 (84 FR 34261; July 18, 2019). In this final rule, SBA is adopting, without change, the interim final provisions contained in the November 2022 rule to ensure that small businesses can successfully compete for Federal contracting opportunities and access SBA's financial assistance programs.

Comments Recommending Changes to the November 2022 Rule

While eight commenters to SBA's November 2022 rule expressed general support for SBA's changes to NAICS-based industry size standards, three commenters petitioned SBA to adjust other monetary thresholds not included in the rule, namely, the alternative size standard applicable to SBA's 7(a) and Certified Development Company (CDC)/504 loan programs (collectively "Business Loan programs"), and the sole source/direct awards thresholds applicable to SBA's 8(a) and other SBA programs. Of these three commenters, one commenter also petitioned SBA to adjust size standards for inflation on an industry-by-industry basis. SBA received one comment urging SBA to revise its calculation of net worth.

Regarding SBA's alternative size standard, a national trade association for Certified Development Companies (CDCs) recommended that SBA immediately adjust for inflation the statutory alternative size standard applicable to SBA's 7(a) and 504 loan programs, and

include it in future inflation adjustments on a five-year schedule, but did not recommend specific thresholds for the alternative size standard.

Regarding the sole source thresholds applicable to SBA's 8(a) and other SBA programs, SBA received one comment from a business recommending that SBA increase the current \$4.5 million threshold for sole source awards applicable to 8(a) contracts for services by a significant amount; however, the commenter did not specify what size level would constitute a "significant" increase, nor provided any data to support their position.

Another commenter urged SBA to adjust the sole source thresholds in line with the House-passed National Defense Authorization Act (NDAA) 2023² and proposed amendments to the Federal Contracting Fairness Act of 2022.³ The commenter recommended that SBA increase the sole source thresholds as follows: \$12,000,000 in the case of a contract opportunity assigned a NAICS code for research and development or related Product Services Codes (PSCs); \$14,000,000 in the case of a contract opportunity assigned a NAICS code for manufacturing or if the small business concern partners with an institution of higher education described in section 371(a) of the Higher Education Act of 1965 (20 U.S.C. 1067q(a)); or \$10,000,000 in the case of any other contract opportunity.

One commenter in this group also petitioned SBA to consider adjusting size standards for inflation on an industry-by-industry basis instead of applying a general price increase to all industries. The commenter argued that the general value applied to all industries doesn't account for market trends and the rising costs of technology tools, software, and program implementation in certain industries.

Another commenter urged SBA to revise its calculation of net worth by allowing applicants to subtract real estate debt from the value of their real estate assets in order to

² Text - H.R. 7900 - 117th Congress (2021-2022): National Defense Authorization Act for Fiscal Year 2023 | Congress.gov | Library of Congress.

³ Text - S. 5044 - 117th Congress (2021-2022): Federal Contracting Fairness Act of 2022 | Congress.gov | Library of Congress.

counter housing price inflation. The commenter expressed concern that housing price inflation may create paper gains for real estate assets that have significant debt liabilities that may force a firm to leave an SBA program.

SBA Response:

Regarding the comment that SBA should evaluate and immediately adjust for inflation the alternative size standard applicable to SBA's 7(a) and 504 loan programs, SBA affirms its commitment to meet its statutory obligation under section 3(a)(5) of the Small Business Act to establish an appropriate alternative size standard using maximum tangible net worth and average net income for its Business Loan Programs. The Jobs Act established for applicants for the SBA's Business Loan Programs an interim alternative size standard of not more than \$15 million in tangible net worth and not more than \$5 million in the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the two full fiscal years before the date of the application and it provided that this interim statutory alternative size standard would remain in effect until such time as SBA has established a new permanent alternative size standard for the Business Loan Programs through rulemaking. 15 U.S.C. 632(a)(5). Prior to that, SBA had a lower permanent regulatory alternative size standard that applied to the 504 Loan Program, and temporarily applied to the 7(a) Loan Program for the period beginning on May 5, 2009, and ending on September 30, 2010, 13 CFR 120.301(b)(2). SBA is not reviewing the alternative size standard applicable to its Business Loan Programs under this final rule. However, SBA intends to issue in the near future a separate proposed rule to adjust for inflation the interim alternative size standards for 7(a) and CDC/504 programs and solicit feedback and public comments on a permanent alternative size standard for SBA's Business Loan Programs.

As part of this effort, on March 22, 2018, SBA issued an advanced notice of proposed rulemaking (ANPRM) to solicit comments and data for use in its forthcoming proposed rule (83 FR 12506). SBA looks forward to receiving public comments on its

proposed revisions to the alternative size standard under the future proposed rule for the alternative size standard for SBA's Business Loan Programs.

Regarding the comments that SBA should adjust for inflation the sole source thresholds applicable to SBA's 8(a) and other SBA programs, SBA notes that 13 CFR 124.506(a)(1) establishes that the Federal Acquisition Regulatory Council (FAR Council) has the responsibility of adjusting each acquisition-related dollar threshold on October 1, of each year that is evenly divisible by five. Accordingly, on October 2, 2020, the Department of Defense (DoD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA), which constitute the FAR Council, issued a final rule adjusting for inflation the sole source thresholds for the 8(a), HUBZone, and Women Owned Small Business programs (85 FR 62485). Specifically, the FAR Council raised the following small business thresholds in 48 CFR part 19: the sole-source thresholds in the 8(a) program to \$7.5 million for manufacturing contracts and \$4.5 million for all other contracts (previously \$7 million and \$4 million, respectively) (19.805-1); the threshold to require a justification for a sole-source 8(a) award to \$25 million (previously \$22 million) (19.808-1), of which DoD applies a \$100 million threshold for these justifications (219.808-1); the sole-source thresholds in the HUBZone program to \$7.5 million for manufacturing contracts and \$4.5 million for all other contracts (previously \$7 million and \$4 million, respectively) (19.1306); the sole-source threshold in the Small Disadvantaged Veteran Owned Small Business (SDVOSB) program to \$7 million for manufacturing contracts (previously \$6.5 million) (19.1406); and the sole-source thresholds in the Woman Owned Small Business (WOSB) program to \$7 million for manufacturing contracts and \$4.5 million for all other contracts (previously \$6.5 million and \$4 million, respectively) (19.1506). Thus, given the recent adjustments to these size standards for inflation and SBA's regulations at 13 CFR 124.506(a)(1) establishing that the FAR Council has the responsibility of adjusting acquisition-related dollar thresholds, in this final rule, SBA is not further

adjusting the above sole source thresholds applicable to SBA programs. However, such adjustments may be made through a future proposed rulemaking.

Regarding the comment petitioning SBA to consider adjusting monetary-based size standards for inflation on an industry-by-industry basis instead of applying a general price increase to all industries, SBA notes that small business size standards are used to determine eligibility of businesses for a wide variety of SBA's and other Federal programs. The majority of businesses participating in those programs are engaged in multiple industries producing a wide range of goods and services. Therefore, it is important that SBA use a broad measure of inflation to adjust its size standards. SBA's preferred measure of inflation has consistently been the chain-type price index for the U.S. Gross Domestic Product (GDP price index), published by the Bureau of Economic Analysis (BEA) within the U.S. Department of Commerce on a quarterly basis as part of its National Income and Product Accounts (NIPA). In the SBA's 2014 IFR adjusting size standards for inflation (79 FR 33647; June 12, 2014), besides the GDP price index, SBA reviewed several alternative inflation measures published by the Federal Government (including the consumer price index, the personal consumption expenditures price index, the producer price index, and the employment cost index) for their appropriateness to use for adjusting SBA's size standards. Among all these indexes, SBA determined that the GDP price index is the most comprehensive measure to capture movements in the general price level in the economy and consequently the most appropriate measure of inflation for adjusting SBA's size standards. Thus, as in the previous inflation adjustments in 2014 and 2019, SBA decided to use the GDP price index to adjust industry-based monetary size standards for the November 2022 inflation adjustment.

Moreover, as discussed earlier in this rule, SBA recently concluded the second five-year review of size standards under the Jobs Act. Under the second five-year review, SBA evaluated all industry-based monetary size standards and adopted revisions to size standards

where appropriate based on SBA's evaluation of industry and Federal contracting factors. The inflation adjustments to size standards adopted in this final rule are in addition to SBA's changes to size standards under the second five-year review of size standards.

SBA believes that its five-year comprehensive review of size standards under the Jobs Act is the most appropriate regulatory venue to evaluate and address industry-specific economic characteristics and recent Federal contracting trends that may support a size standard different from SBA's current size standard. As part of its review of size standards, SBA must ensure that small business definitions vary from industry to industry to reflect industry differences as required by the Small Business Act (15 U.S.C. 632(a)) (Act). To that end, as part of the comprehensive review of size standards, SBA evaluates industry structure at the 6-digit NAICS level, such as average firm size, startup costs and entry barriers, industry concentration, and distribution of firms by business size. SBA also evaluates Federal contracting trends (*i.e.*, small business share of Federal contract dollars relative to small business share of total industry's receipts) for industries with significant contracting activities (*i.e.*, industries averaging \$20 million or more in Federal contracts annually). Based on its analysis of the above industry and Federal contracting factors, and after considering all comments submitted to SBA during the proposed rule stage, in March and June of 2022, as part of SBA's second five-year review of size standards, SBA issued a series of five final rules reviewing all industry-based monetary size standards as required under the Jobs Act.⁴ Thus, while SBA is not including a comprehensive review of industry factors in this final rule, SBA believes that it has satisfied the commenter's petition to consider industry-specific factors in the evaluation of size standards under the recently completed, second five-year review of size standards.

Regarding the comment urging SBA to revise its calculation of net worth by excluding real estate debt from the calculation of net worth, SBA assumes that the

⁴ See Footnote 1, above.

commenter is referring to SBA's net worth calculation for determining economic disadvantage for purposes of assessing eligibility for participation in the 8(a) BD program. SBA notes that under the current regulations at 13 CFR 124.104(a), economically disadvantaged individuals are defined as those whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged. SBA disagrees that real estate debt should be excluded from the calculation of net worth because such exclusions may allow individuals with access to substantial capital and credit opportunities, as demonstrated by their significant real estate debts, to qualify as economically disadvantaged. This would be counter to SBA's definition of an economically disadvantaged individual, which requires that individuals demonstrate diminished capital and credit opportunities.

Prior to the SBA's November 2022 rule, the net worth of an economically disadvantaged individual had to be less than \$750,000. In addition, their Income (AGI) (13 CFR 124.104(c)(3)) had to be less than \$350,000, and their Total Assets (13 CFR 124.104(c)(4)) less than \$6 million. In the November 2022 rule, SBA increased these thresholds for inflation. Currently, the net worth of an economically disadvantaged individual must be less than \$850,000 (13 CFR 124.104(c)(2)), Income (AGI) (13 CFR 124.104(c)(3)) must be less than \$400,000, and Total Assets (13 CFR 124.104(c)(4)) less than \$6.5 million. In determining net worth, SBA excludes the individual's equity in their primary personal residence. However, exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes. SBA continues to believe that it is appropriate to determine economic disadvantage for purposes of the 8(a) BD program based on these factors, and thus, is not adjusting the methodology for calculating net worth in this final rule.

Conclusion

With due consideration of all public comments as discussed above, in this final rule, SBA is adopting the increases in all industry-specific monetary size standards for inflation, as published in the November 2022 rule. SBA is also adopting the adjustments for inflation to three program-specific receipts-based size standards contained in the November 2022 rule. These include sales or leases of Government property for which SBA is adopting \$9 million in average annual receipts, stockpile purchases for which SBA is adopting \$76.5 million in average annual receipts, and the alternative size standard based on tangible net worth and net income for the Small Business Investment Company (SBIC) program for which SBA is adopting \$24 million of tangible net worth and \$8 million of net income.

SBA also adopts the adjustments to monetary thresholds used in the 8(a) BD and the EDWOSB programs to determine eligibility of applicants and current participants as economically disadvantaged business concerns, as contained in the November 2022 rule. Specifically, SBA is adopting the following economic disadvantage thresholds for the 8(a) BD and EDWOSB programs: \$850,000 as the threshold for Net worth (13 CFR 124.104(c)(2)), \$400,000 as the threshold for Income (AGI) (13 CFR 124.104(c)(3)), and \$6.5 million as the threshold for Total Assets (13 CFR 124.104(c)(4)). SBA is also adopting \$168.5 million as the dollar limit for combined total 8(a) contracts (13 CFR 124.519).

Accordingly, SBA is issuing this final rule to adopt and finalize, without change, the interim final changes contained in the rule published on November 17, 2022 (87 FR 69118).

Compliance with Executive Order 12866, the Congressional Review Act (5 U.S.C. 801-808), the Regulatory Flexibility Act (5 U.S.C. 601-612), Executive Orders 13563, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C., Ch. 35).

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is not a “significant regulatory action” for purposes of Executive Order 12866. OMB also determined that the November 2022 rule was not a “significant regulatory action” for

purposes of Executive Order 12866. However, in order to help explain the need for this rule and its potential benefits and costs, SBA provided a Cost Benefit Analysis of the rule in the November 2022 rule, which is summarized below.

Cost Benefit Analysis:

SBA's statutory mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs effectively, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) (Act) delegates to the SBA Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary from industry to industry to reflect industry differences. SBA is required to assess the impact of inflation on its monetary-based size standards at least once every five years (67 FR 3041; January 23, 2002) (13 CFR 121.102(c)). This final rule adopts, without change, the interim final changes contained in the November 2022 rule.

The most significant benefit to businesses of SBA's adjustments to size standards for inflation finalized in this final rule were described in detail in the November 2022 rule. The size standards adopted by SBA at that time enabled businesses that exceeded size standards simply due to inflation-driven revenue growth to regain or maintain eligibility for Federal small business assistance programs. The changes also helped businesses about to exceed their size standards to retain small business eligibility for Federal programs for a longer period. These programs included SBA's financial assistance programs, economic injury disaster loans (EIDL), and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a) BD, Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), WOSB, EDWOSB, and SDVOSB. Federal agencies may also use SBA's size standards for

a variety of other regulatory and program purposes. These programs assist small businesses to become more knowledgeable, stable, and competitive.

Besides small business contracting opportunities and financial assistance, small businesses also benefited through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through Federal agencies that use SBA's monetary-based size standards.

In the November 2022 rule, SBA estimated that the changes would enable approximately 17,713 firms in industries and subindustries with receipts-based size standards and about 170 firms in industries with assets-based size standards, above SBA's size standards, to gain small business status and become eligible for these programs. SBA estimated that this change would increase the small business share of total receipts in industries and subindustries with receipts-based size standards from 29 percent to 30 percent and the small business share of total assets in industries with assets-based size standards from 5.4 percent to 5.9 percent.

SBA also estimated that firms gaining small business status under the inflation adjusted size standards could receive \$1.3 billion in additional small business Federal contract dollars. This represented an increase of about 1.7 percent over the baseline. Additionally, by allowing businesses above the size threshold to regain small business status and advanced small businesses close to size standards to prolong their small status for a longer period, the November 2022 rule expanded the pool of qualified small firms for Federal agencies to draw upon to meet their small business requirements.

Moreover, SBA estimated that about seven additional loans totaling about \$4.1 million could be made to the newly defined small businesses under SBA's 7(a) and 504 Loan Programs under the adjusted industry-based size standards.

To the extent that those 17,883 additional small firms under receipts-based and assets-based size standards could become active in Federal procurement programs, SBA

estimated in the November 2022 rule that the adjusted size standards may entail some additional administrative costs to the government as a result of more businesses being eligible for Federal small business programs. For example, there could be more firms seeking SBA's guaranteed loans, more firms eligible for enrollment in the Dynamic Small Business Search (DSBS) database or in certify.sba.gov, more firms seeking certification as 8(a) or HUBZone firms or qualifying for small business, WOSB, EDWOSB, SDVOSB, and SDB status, and more firms applying for SBA's 8(a) BD and all small business mentor-protégé programs.

One may surmise that an expanded pool of small businesses under higher size standards due to inflation adjustment might result in a higher number of small business size protests and additional processing costs to agencies. However, SBA's historical data on size protests shows that the number of size protests actually decreased after an increase in the number of businesses qualifying as small as a result of size standards revisions as part of the first five-year review of size standards. Specifically, on an annual basis, the number of size protests dropped from about 600 during fiscal years 2011-2013 (review of most receipts-based size standards was completed by the end of FY 2013) to about 500 during fiscal years 2018-2020. That represents a 17 percent decline.

Aside from taking time to register in the System for Award Management (SAM) to be eligible to participate in Federal contracting and update the SAM profile annually, SBA estimated that small businesses incur no direct costs to gain or retain their small business status under the inflation adjusted size standards. All businesses willing to do business with the Federal Government must register in SAM and update their SAM profiles annually, regardless of their size status. SBA believes that a vast majority of businesses that are willing to participate in Federal contracting are already registered in SAM and update their SAM profiles annually. It is important to point out that most business entities that are already registered in SAM will not be required to update their SAM profiles. However, it

will be incumbent on registrants to review, and update as necessary, their profiles to ensure that they have the correct NAICS codes. SAM requires that registered companies review and update their profiles annually, and therefore, businesses will need to pay particular attention to the changes to determine if they might affect them. They will also have to verify, and update, if necessary, their Representations and Certifications in SAM. More importantly, this rule does not establish the new size standards for the very first time; rather it intends to modify the existing size standards by adjusting them for the inflation that has occurred since the last inflation adjustment in 2019.

In the November 2022 rule, SBA also described how, due to the expanded pool of small businesses, contracts may move from unrestricted competition to small business set-aside contracts, resulting in competition among fewer total bidders. However, any additional costs associated with fewer bidders are expected to be minor since, by law, procurements may be set aside for small businesses under the 8(a)/BD, HUBZone, WOSB, EDWOSB, or SDVOSB programs only if awards are expected to be made at fair and reasonable prices.

Costs may also be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to the availability of a larger pool of small businesses under the higher inflation-adjusted size standards, HUBZone firms might receive fewer full and open contracts, thereby resulting in some cost savings to agencies. However, such cost savings are likely to be minimal as only a small fraction of unrestricted contracts are awarded to HUBZone businesses.

An increase in the number of new applicants to SBA's economic disadvantage programs and an increase in the number of participants eligible for 8(a) sole source awards has similar costs for the programs and for the new applicants and current participants, as

discussed in the previous paragraphs. The increase in the number of participants in the programs will not affect the SBA costs of providing services to these business concerns, because the administrative structure is already in place.

SBA's adoption of increases in the economic disadvantage (ED) eligibility thresholds through inflation adjustment support gaining eligibility of the new applicants which would otherwise be not approved and maintaining eligibility of the existing participants in the 8(a) BD and EDWOSB programs. The new applicants affected by inflation impacting the value of their net worth (NW), adjusted gross income (AGI), and total assets (TA) will be approved into these programs. The inflation adjusted thresholds would also help current SBA ED participants who are about to exceed their NW, AGI, or TA thresholds to retain ED eligibility for Federal programs for a longer period.

Internal data on applicants to the 8(a) BD program from fiscal years 2019-2021 showed that since the ED thresholds were increased for new applicants in mid-2020 (*see* Table 7, Increases in ED Thresholds Adopted on July 15, 2020, in the November 2022 rule), the number of approvals increased by 3.2 percent, and the number of denials for economic-disadvantage reasons decreased by 36.8 percent. The same data also showed that since 2019, the applicants' average net worth increased by 50 percent, the average AGI by about 20 percent, and the average total assets by 40 percent.

SBA's inflation adjustment to the ED thresholds provides current program participants with a longer runway to maintain eligibility and allows SBA to approve new applicants to the ED programs who may have been ineligible due to the impacts of the current inflation rate. SBA believes that finalizing the inflation adjustment of the ED thresholds helps to preserve the real value of the current thresholds.

For the above reasons, SBA estimates that the added administrative costs associated with SBA's adopted changes will be *de minimis* because necessary mechanisms are already in place to handle these added requirements.

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the *Federal Register*. OMB's Office of Information and Regulatory Affairs has determined that this rule is not a “major rule” as defined by 5 U.S.C. 804(2).

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this final rule may have a significant impact on a substantial number of small businesses in the industries and subindustries with monetary size standards. As described above, this rule may affect small businesses in those industries seeking Federal contracts, loans under SBA's 7(a), 504 and EIDL Programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this final rule addressing the following questions: (1) What are the need for and objective of the rule?; (2) What are SBA's description and estimate of the number of small businesses to which the rule will apply?; (3) What are the projected reporting, record keeping, and other compliance requirements of the rule?; (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule?; and (5) What alternatives will allow the

Agency to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What are the need for and objective of the rule?

As discussed in the supplemental information, the revision to the monetary-based size standards for inflation more appropriately defines small businesses. This final rule is a procedural step that merely finalizes the changes already in place since December 19, 2022 (the effective date of SBA's November 2022 rule), that restored small business eligibility in real terms to businesses that exceeded the size standard due to inflation-led revenue growth rather than due to increased business activity.

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) gives SBA the authority to establish and change size standards. Within its administrative discretion, SBA implemented a policy in its regulations to review the effect of inflation on size standards at least once every five years (13 CFR 121.102(c)) and make any changes as appropriate. A review of the latest data indicated that inflation had increased a sufficient amount since the 2019 adjustment to warrant another inflation adjustment to the monetary-based size standards. Adjusting size standards for inflation is also consistent with a statutory requirement to review all size standards and make adjustments to reflect current market conditions every five years under the Jobs Act.

2. What are SBA's description and estimate of the number of small businesses to which the rule will apply?

Based on the 2017 Economic Census tabulations, in the November 2022 rule, SBA estimated that the changes would enable approximately 17,713 firms in industries and subindustries with receipts-based size standards and about 170 firms in industries with assets-based size standards, above SBA's size standards, to gain small business status and become eligible for these programs. SBA estimated that this change would increase the small business share of total receipts in industries and subindustries with receipts-based size

standards from 29 percent to 30 percent and the small business share of total assets in industries with assets-based size standards from 5.4 percent to 5.9 percent. The size standards adopted in the November 2022 rule enabled businesses that have exceeded the size standards for their industries to regain small business status. It also helped advanced small businesses to retain their small business status, and associated benefits, for a longer period.

3. What are the projected reporting, record keeping and other compliance requirements of the rule?

The inflation adjustment to size standards imposes no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in the SAM database and certify in SAM that they are small at least once annually. Therefore, any newly-eligible small businesses opting to participate in those programs would have had to comply with SAM requirements. However, SBA estimates that there are no additional costs associated with SAM registration or certification. While changing size standards alters the access to SBA's programs that assist small businesses, it does not impose a regulatory burden because such actions on the part of SBA neither regulate nor control business behavior.

4. What are the relevant Federal rules, which may duplicate, overlap, or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the *Federal Register* a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57982; November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition for Regulatory Flexibility Analysis purposes, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

SBA's only other consideration was whether to adopt the size standards presented in the November 2022 rule with no further increase for the inflation. However, SBA believes that the 13.65 percent inflation increase since the previous inflation adjustment in July 2019 sufficiently affects the real value of the size standards to warrant applying an increase at this time. SBA also believes that its inflation adjustments to the dollar limit for combined total 8(a) contracts and the economic disadvantaged thresholds applicable to 8(a) BD and EDWOSB are appropriate, as well as the adjustments to three program-specific monetary size standards: namely, the size standards for sales or leases of government property, the size standards for stockpile purchases, and alternative size standard based on tangible net worth and net income for the Small Business Investment Company (SBIC) program.

Executive Order 13563

E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. A description of the need for this regulatory action and benefits and costs associated with this action including possible

distributional impacts that relate to Executive Order 13563 is included above in the Benefit-Cost Analysis under Executive Order 12866 and in greater detail in the November 2022 rule which adopted the size standards effective December 19, 2022. Additionally, section 6 of E.O. 13563 calls for retrospective analyses of existing rules.

SBA updated the Small Business Procurement Advisory Council (SBPAC) on its November 15, 2022, and December 13, 2022, meetings about upcoming rules on size standards, including inflation adjustment. SBA also presented a similar update to the small business audience at the Small Business Alliance of Government Contractors and at various other industry events.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This rule does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this final rule will not have substantial, direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule will not impose any new reporting or record keeping requirements.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs – business, Individuals with disabilities, Loan programs – business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 124

Administrative practice and procedure, Government procurement, Government property, Small businesses.

13 CFR Part 127

Government contracts, Reporting and recordkeeping requirements, Small businesses.

PART 121 -- SMALL BUSINESS SIZE REGULATIONS

**PART 124 -- 8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED
BUSINESS STATUS DETERMINATIONS**

**PART 127 -- WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT
PROGRAM**

For the reasons set forth in the preamble, the interim final provisions amending 13 CFR parts 121, 124, and 127, published on November 17, 2022 (87 FR 69118), are adopted as a final rule without change.

Isabella Casillas Guzman,
Administrator.

[FR Doc. 2023-15078 Filed: 7/18/2023 8:45 am; Publication Date: 7/19/2023]